



December 22, 2000

Ms. Lamis A. Safa
Assistant City Attorney
City of Houston
Post Office Box 1562
Houston, Texas 77251-1562

OR2000-4830

Dear Ms. Safa:

You ask this office to review Open Records Letter No. 2000-3715 (2000). Your request was assigned ID# 141944.

In Open Records Letter No. 2000-3715, we determined that, because you did not submit to this office a brief stating the reasons why the exceptions you claimed excepted the submitted information from public disclosure, the City of Houston (the "city") must release the majority of information under sections 552.301 and 552.302.¹ You now assert that you did in fact timely submit the brief to this office. You have submitted to this office an affidavit attesting to the fact that on July 18, 2000, you submitted to this office a letter informing us of the exceptions you planned to raise to support your argument to withhold the requested information. You state in the affidavit that on July 25, 2000, you drafted the legal argument, signed it, gathered and marked all the exhibits, placed the legal argument on top of the exhibits and gave them to your secretary to put in an envelope you had already prepared. You state that your secretary inserted the documents in an envelope and sealed it. You further state that your legal assistant took the envelope to the post office for delivery and that the documents were sent by certified mail, return receipt requested, and the receipt was signed and returned to you. You provide this office with the July 18, 2000 letter, the brief in dispute and the return receipt form.

¹In Open Records Letter No. 2000-3715, we also determined that the city may withhold from disclosure portions of the requested information based on sections 552.101 and 552.130 of the Government Code. You do not ask us to review those determinations.

After review of your affidavit and our records, we conclude that we will consider your arguments in support of the exceptions you have raised to withhold the requested information from public disclosure.

You state that the information at issue consists of records of an internal investigation located in the file of the Houston Police Department Internal Affairs Unit of the Office of Inspector General. You maintain that this department file is made confidential by section 143.089(g) of the Local Government Code.

Section 143.089(g) reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file." Local Gov't Code § 143.089(g); *see City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

The court in *City of San Antonio* addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied) (in construing section 143.089, the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action).

You inform this office that the allegations of misconduct are still under investigation and that no disciplinary action has been taken against the police officer. Consequently, we conclude that the requested records that are maintained only within the section 143.089(g) file are confidential and may not be disclosed. We note, however, that some of these documents relate to a criminal investigation. Thus, if these records exist elsewhere, outside the

section 143.089(g) file, these records would be subject to disclosure under the Public Information Act unless another exception to disclosure is applicable.

As for the responsive records that may exist outside the department's section 143.089(g) file, we consider your section 552.108 claim. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information pertains to a police investigation that is still open and ongoing. You state that the statute of limitations has not yet run. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime."

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Indeed, you state that the city will provide the requestor "the public release information page of the offense report."

In summary, the city's affidavit establishes that the city complied with section 552.301 of the Government Code. Consequently, section 552.302 does not come into play in this request and we will consider the city's raised exceptions. Based on section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code, the city must withhold the information that consists of the departmental personnel file. Based on section 552.108 of the Government Code, the city may withhold from disclosure records held outside the department file, except to the extent such records consists of front page basic information. Open Records Letter No. 2000-3715 is overruled to the extent that it conflicts with this decision.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

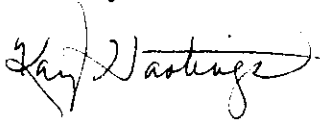
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/seg

Ref.: ID# 141944

cc: Mr. Kenneth W. McGuire
McGuire & McZeal
P.O. Box 941222
Houston, Texas 77094-8222
(w/o enclosures)